UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN RE: CASE NO. 04-10427	)	
	)	
AUBURN FOUNDRY, INC.	)	
	)	
Debtor	)	
	)	
	)	
REBECCA HOYT FISCHER, TRUSTEE	)	
	)	
Plaintiff	)	
	)	
vs.	)	PROC. NO. 05-1059
	)	
CITIZENS GAS & COKE UTILITY	)	
	)	
Defendant	)	

DECISION AND ORDER ON DEFENDANT'S MOTION TO REOPEN DISCOVERY

At Fort Wayne, Indiana on June 8, 2006.

The deadline for completing all discovery in this adversary proceeding was April 30, 2006. When that date came, discovery was still not complete because the plaintiff had not yet responded to a second set of interrogatories and request for production of documents that the defendant served on April 14. Apparently the trustee did not respond until May 11, and in doing so raised some objections to the request. As a result of what the defendant learned in discussing the matter with the trustee, the defendant has now asked the court to reopen discovery and give it until August 15 to complete additional third-party discovery. On a related note, the parties filed a proposed pre-trial order on May 30, 2006 – the date it was due – which the court has reviewed and found satisfactory, so that it is currently in the process of scheduling this matter for trial. Because of the defendant's desire for additional discovery, it has also asked the court to set a deadline of September 15, 2006,

for the parties to file an amended pre-trial order.

Since the present motion was filed on June 1, more than thirty (30) days after the discovery deadline expired, it is largely premised upon Rule 9006(b)(1) of the Federal Rules of Bankruptcy Procedure which allows the court to extend a deadline after it is expired where the failure to comply was the result of excusable neglect. Whether or not the court does so is an equitable determination which is largely committed to the court's discretion. See e.g., Pioneer Investment Services Co. v. Brunswick Associates Ltd. Partnership, 507 U.S. 380, 113 S.Ct. 1489 (1993); In re DeLaughter, 295 B.R. 317, 319 (Bankr. N.D. Ind. 2003). See also, Olive Can Co., Inc. v. Martin, 906 F.2d 1147, 1152 (7th Cir. 1990)(decision to allow additional discovery is discretionary). To this end, the defendant argues that its failure to serve third-party discovery prior to the present time was the result of excusable neglect. In the court's opinion, however, the proper focus of the court's inquiry should not be whether the defendant's failure to initiate third-party discovery was the product of excusable neglect, but, instead whether the failure to seek an extension of the discovery deadline before it expired constituted excusable neglect. See, Brosted v. Unum Life Ins. Co. of America, 421 F.3d 459, 463-64 (7th Cir. 2005). The court finds that it does not.

Discovery must be completed, not simply served, prior to the discovery deadline. In re Burrow, 141 B.R. 665, 666 (Bankr. E.D. Ark. 1992). Here, as that deadline approached the defendant knew that discovery was not complete and probably would not be completed by that deadline – if only for no other reason than the interrogatories and document production request it served upon the plaintiff on April 14. Since the defendant neither sought nor received an order shortening plaintiff's time to respond to that discovery, no response would be due until May 14, 2006, after the discovery deadline had expired. Furthermore, it is not at all surprising that the

plaintiff's response to that discovery might generate further questions or issues. Under these circumstances, where the defendant knew discovery would not be completed prior to the deadline – the only issue really being how incomplete it would be – the defendant should have sought an extension of that deadline before it expired. It did not do so and it has failed to offer any explanation as to how that failure might constitute excusable neglect.

The deadline for completing discovery in this case expired more than thirty (30) days ago, the parties have filed a pretrial order and the court is in the process of setting this matter for trial.[1]

> The . . . courts must manage a burgeoning case load, and they are under pressure to do so as efficiently and speedily as they can, while still accomplishing just outcomes in every civil action . . . . Part of that job means that they are entitled – indeed they must – enforce deadlines. Reales v. Consolidated Rail Corp., 84 F.3d 993, 996 (7th Cir. 1996)(citations omitted). See also, Spears v. City of Indianapolis, 74 F.3d 153, 157 (7th Cir. 1996)("The flow of cases through a busy [] court is aided, not hindered, by adherence to deadlines.").

Defendant's motion to reopen discovery is DENIED.

SO ORDERED.

/s/ Robert E. Grant
Judge, United States Bankruptcy Court

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[1]In an effort to avoid the "full calendar empty courtroom syndrome" which often results from last minute settlements and to avoid a trailing calendar in which more than one matter will be set for trial at the same date and time, the court does not generally schedule matters for trial until the parties have indicated that the matter continues to be at issue and that they are ready for trial. They do so through filing a pre-trial order which, if it complies with the requirements of the local rules of this court, see, N.D. Ind. L.B.R. B-7016(c), is approved and the matter set for trial, generally within the coming sixty (60) days. In all likelihood the trial in this matter would be scheduled to take place before the end of July and definitely before mid-September. To grant the defendant's present motion would push the new discovery deadline out beyond the currently anticipated date for trial and require the court to wait until mid-September before scheduling a trial which would push the anticipated trial date back into mid-November.